

Attachment A - Bivens Complaint form

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

FILED

SEP - 4 2015

TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

Jose Angel Martinez-Cantu#12112-179

(Enter above the full name of the plaintiff
or plaintiffs in this action)

(Inmate Reg. # of each Plaintiff)

v.

CIVIL ACTION NO. 1:15-cv-12961
(Number to be assigned by Court)

United States of America
FCI McDowell Medical Staff:
Tracey Walters (RN)

Kelly Lucas (Health Services Administrator)

W. Walters (RN)

Dr. Isaac Alexis (Clinical Director)

Ashley Stark (PA-C)

Bart Masters (Warden)

(Enter above the full name of the defendant
or defendants in this action)

Defendant(s).

COMPLAINT**I. Parties**

A. Name of Plaintiff: Jose Angel Martinez-Cantu

Inmate No.: #12112-179

Address: Federal Correctional Institution, McDowell

P.O. Box 1009, Welch, WV 24801

- B. Additional Plaintiff(s) (provide the same information for each plaintiff as listed in Item A above).

Name of Plaintiff: _____

Inmate No.: _____

Address: _____

Name of Plaintiff: _____

Inmate No.: _____

Address: _____

- C. Name of Defendant: FCI McDowell Medical Personnel: Tracey Walters

Position: Registered Nurse

Place of Employment: Federal Correctional Institution, McDowell

P.O. Box 1009, Welch, WV 24801

- D. Additional Defendant(s) (provide the same information for each defendant as listed in Item C above):

Name of Defendant: W. Walters

Position: Registered Nurse

Place of Employment: Federal Correctional Institution, McDowell

P.O. Box 1009, Welch, WV 24801

Name of Defendant: Ashley Stark

Position: Physician Assistant-C

Place of Employment: Federal Correctional Institution, McDowell

P.O. Box 1009, Welch, WV 24801

[See attached for
final name]

(Continued from page 2; additional defendant):

Name of Defendant: Bart Masters

Position: Institutional Warden

Place of Employmt: Federal Correctional Institution, McDowell
P.O. Box 1009, Welch, WV 24801

Name of Defendant: Kelly Lucas

Postition: Health Services Administrator

Place of EmPLYmt: Federal Correctional Institution, McDowell
P.O. Box 1009, Welch, WV 24801

Name of Defendant: Dr. Isaac Alexis

Position: Clinical Director

Place of EmPLYmt: Federal Correctional Institution, McDowell
P.O. Box 1009, Welch, WV 24801

[W I T N E S S E S O F A C C I D E N T]

Jose Rubio #20646-047

Rudolph McRae #09416-007

William Ruins #16300-032

Dorian Blush #55135-056

II. Place of Present Confinement

Name of Prison/Institution: Federal Correctional Institution, McDowell

A. Is this where the events concerning your complaint took place?

Yes [Yes] No _____

If you answered "no," where did the events occur? _____

B. Is there a prisoner grievance procedure in this institution?

Yes [Yes] No _____

C. Did you present the facts relating to your complaint in the prisoner grievance procedure? Yes [Yes] No _____

If you answered "no," explain why not: _____

If you answered "yes," what was the result at level one, level two and level three (attach grievances and responses): On each level it was unresolved.

(See attached Exhibit '1'; All Administrative Remedies have been exhausted).

III. Previous Lawsuits

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise related to your imprisonments?

Yes _____ No [No]

B. If your answer to A is "yes," describe the lawsuit in the space below. If there is more than one lawsuit, describe the additional lawsuits on another piece of paper using the same outline.

1. Parties to the previous lawsuit:

Plaintiff(s): N/A

Defendant(s): N/A

2. Court (if federal court, name the district; if state court, name the county);
N/A
3. Docket Number: N/A
4. Name of judge to whom case was assigned: N/A
5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)
N/A
6. Approximate date of filing lawsuit: N/A
7. Approximate date of disposition: N/A

IV. Statement of Claim

State here, as briefly as possible, the facts of your case. Describe what each defendant did to violate your constitutional rights. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets of paper if necessary.)

On or about June 22, 2014, I was performing my kitchen sanitation job of cleaning the ceramic tiled floor around the ovens (that the cooks leave greasy after they prepre the daily meals). My job is to clean up this grease, in which I started by throwing 110° hot water on the floor to loosen up the grease. When I swung the half full 5 gallon bucket out in front of me, my right foot slipped from under me and I fell sideways onto my left shoulder, landing so hard on the floor that my head bounced on it and my left shoulder became dislocated.

Immediately, I felt a sharp, stabbing pain shoot through my left shoulder, neck, back, and the side of my head. I became dazed and blacked out for a moment [Please see Exhibit '2'; Affidavit of Jose Martinez-Cantu]. When I came to, the Kitchen duty officer, C.O. Looney, Jose Rubio, and several others gathered, asking if I was alright. I shook off my dizziness as much as possible, but I still felt the tremendous pain in my left shoulder. From how I looked in pain, Correctional Officer Looney referred me to Medical. This is where all my troubles really began.

Initially, I was seen by Tracey Walters, RN who treated me by simply feeling around at the pain source of my left shoulder. Then she eventually gave me a shot for my pain, some Ibuprofen, and an arm sling. Nothing more was done for me. I returned the next day explaining how excruciatingly painful my shoulder

[See attached page for more]

(Continued from page '4'; Statement of Claim):

felt. I encountered Physician Assistant-C, Sherri Lilly who explained to me of the possibility of X-Rays and seeing an outside doctor (ortho surgeon) but nothing was written to be a factual occurrence. RN Tracey Walters was there that day and refused to give me more Ibuprofen meds for my pain. I was told to buy it from the commissary. I did on three occasions, but my money did not hold out and I let someone else buy it for me. With no job, I had no income.

Between the month of June and November of 2014, I repeatedly attended sick call on three or four different occasions (which were not documented) [See Exhibit '4'; Medical Records]. I came to sick call because of my pain and suffering: migraine headaches, blurred vision, numbness in my shoulder/arm, forgetfulness, and some dizziness. I asked for Ibuprofen or any meds to relieve my poor condition, but each time I was refused any type of treatment and was adamantly told to purchase Ibuprofen from the commissary.

Please note: I was refused treatment on different occasions by both RN's W. Walters and Tracey Walters, and PA-C Ashley Stark; the Defendants, who repeatedly told me on different undocumented sick call visits: "Don't worry, you will be alright." "Go buy the pain med (Ibuprofen) at the commissary." "Medical can't do anything for you."

Although I have limited understanding of English, I still tried to translate my healthcare concerns to the Defendants. I'm sure of one thing, from my frowning facial expression of pain...it could be obviously read that I was suffering from my left shoulder and trauma with extreme pain. I even requested to see an ortho doctor (which was denied)[See Exhibit '3']. This denial involves Kelly Lucas (Health Service Administrator) and Dr. Isaac Alexis (Clinical Director, Defendants also within this civil action).

At my wit's end to have something done about my left shoulder, I contacted the Mexican Council [See Exhibit '5'] to involve their input to do something on my behalf and why my 8th Amendment Rights was being violated.

[Plaintiff's Claim]

I was forced to endure (9) months of excruciating pain, discomfort, insomnia, headaches, throbbing sharpness, numbness, limited functional use of my upper left side and the inability to work without the benefit of receiving the necessary medical treatment of having my left shoulder 'set back in place,' and thus, alleviating my suffering. I was humiliated, talked to like a child, and belittled from the Defendants: W. Walters, Tracey Walters, Ashley Stark, Kelly Lucas, Dr. Isaac Alexis and Bart Masters by their blatant refusal to provide me with the proper medical treatment I am entitled to as an inmate under their charge.

From the Defendants' negligence, with willful deliberate indifference, my dislocated left shoulder, along with its persisting pain, healed deformatly with the collar bone protruding awkwardly upward, forming a noticeable 'hump' on the top of my shoulder. This deformity could have been prevented had the defendants been competent enough to act to 're-set' my shoulder. The pain and suffering I endured for (9) months could have also been avoided. Therefore, I am seeking compensation for my suffering because of the Medical providers' and Institutional Administration wantonness to allow, or to do anything about, a serious medical need that should have been properly treated immediately.

V. Relief

State briefly and exactly what you want the Court to do for you. Make no legal arguments.
Cite no cases or statutes.

Plaintiff in this civil action seeks compensatory damages for his physical injury (dislocated left shoulder) and the loss of privileges and quality of life in his prison living condition, resulting from the shoulder injury's excruciating pain and suffering that went untreated for 9 months, thus, interfering with Plaintiff's daily course of normal functioning.

Plaintiff also seeks punitive damages against Defendants: Bart Masters, W. Walters, Tracey Walters, Ashley Stark, Kelly Lucas, and Isaac Alexis for their willful and malicious conduct towards providing or allowing inadequate medical care.

Plaintiff is seeking compensation for three separate injuries/damage: physical injury; mental and emotional injury; and punitive damage, with a monetary amount to be decided.

Signed this 1st day of September, 20 15.

JOSE MARTINEZ-CANTU

Signature of Plaintiff or Plaintiffs

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 1, 2015
(Date)

JOSE MARTINEZ-CANTU
Signature of Plaintiff